

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Cynthia F. Cox,

Plaintiff,

vs.

Kilolo Kijakazi, Acting Commissioner
of Social Security,

Defendant.

Civil Action No. 5:19-cv-2067-CMC

ORDER

This matter is before the court on the petition of Plaintiff's attorney seeking \$25,320.50 in attorney's fees pursuant to 42 U.S.C. § 406(b). ECF No. 35. Defendant filed a response and neither supports nor opposes an award of \$25,320.50 in attorney's fees under § 406(b). ECF No. 36. For the reasons set forth below, the petition is granted.

Plaintiff has petitioned the District Court twice for judicial review of administrative decisions denying her benefits. This court reversed and remanded the first case for further administrative proceedings on April 12, 2018. C/A. No. 5:17-cv-00332, ECF No. 27. On remand, the Administrative Law Judge entered a second unfavorable decision dated May 21, 2019, and Plaintiff filed the instant action on July 24, 2019. C/A No. 5:19-cv-02067, ECF No. 1. On October 19, 2020, this court reversed and remanded the case to the Commissioner with instructions to award benefits. *Id.* at ECF No. 28. Plaintiff was awarded EAJA fees in both cases, for a total of \$16,250. C/A. No. 5:17-cv-00332, ECF No. 33 (awarding \$7,500 in fees); C/A No. 5:19-cv-02067, ECF No. 34 (awarding \$8,750 in fees).

Plaintiff's attorney now seeks an award of attorney's fees pursuant to § 406(b), in the amount of \$25,320.50. This amount is twenty-five percent (25%) of the past-due benefits awarded to Plaintiff and her dependent for representation in this district court in both actions. The

percentage is consistent with the terms of the written contingency fee agreement between Plaintiff and her attorney. Plaintiff's counsel requests the court authorize a payment of the amount requested (\$25,320.50) from Plaintiff's past-due benefits (due to her and her dependent), with counsel to remit the EAJA fee amount, \$16,250, to Plaintiff.

In light of the contingent nature of the fees and other relevant considerations (e.g., complexity of the matter, adequacy of representation, and absence of any delay caused by counsel), the court finds the fee sought and equivalent hourly rate are reasonable. *See Gisbrecht v. Barnhart*, 535 U.S. 789 (2002) (approving fees based on contingency fee agreement subject to review for reasonableness, which review considers, inter alia, whether there has been substandard representation or delay caused by counsel). Counsel worked diligently over two district court cases and nearly 10 years, and obtained an award of benefits for Plaintiff and her dependent, including back benefits from July 2013.

The court, therefore, approves payment of attorney's fees to Plaintiff's attorney under 42 U.S.C. § 406(b) in the amount of \$25,320.50 for work in this district court over the two cases, with counsel to remit the EAJA fee amount, \$16,250, to Plaintiff. *See Stephens ex rel. R.E. v. Astrue*, 565 F.3d 131, 135 (4th Cir. 2009) ("[T]he claimant's attorney refunds to the claimant the amount of the smaller fee."). The \$25,320.50 is to be paid from the past-due benefits.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
August 22, 2023